

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *B.A. Blacktop Ltd. v. Fazio*,
2023 BCSC 892

Date: 20230516
Docket: S2111108
Registry: Vancouver

Between:

B.A. Blacktop Ltd. and Eurovia BC Inc.

Plaintiffs

And

**Domenica Fazio, Bank of Nova Scotia, Canadian
Imperial Bank of Commerce, Toronto Dominion
Bank, John Doe, and Jane Doe**

Defendants

Before: The Honourable G.P. Weatherill

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

J. Bradshaw
S. Wright

Appearing as a self-represented party:

D. Fazio

Place and Date of Hearing:

Vancouver, B.C.
May 15 & 16, 2023

Place and Date of Judgment:

Vancouver, B.C.
May 16, 2023

[1] **THE COURT:** These are my oral reasons for judgment. If a transcript is ordered, I reserve the right to edit for clarity, but the result will not change.

[2] The plaintiffs seek summary determination pursuant to either R. 9-6 or R. 9-7 of the *Supreme Court Civil Rules* [Rules] against Ms. Domenica Fazio for fraud, conversion, and deceit. They seek judgment against her in the amount of \$1,923,820.74, together with interest, punitive damages, and special costs. They also seek to have the response to civil claim filed by Ms. Fazio struck pursuant to R. 9-5(1)(a) as disclosing no reasonable defence to their claim.

I. BACKGROUND

[3] The basis of the plaintiffs' action is that Ms. Fazio misappropriated and unlawfully converted \$1,923,920.74 for her own benefit while she was employed by the plaintiffs from 2015 to 2021. Ms. Fazio was a payroll administrator and later a payroll supervisor until she resigned her employ on August 5, 2021.

[4] Shortly after Ms. Fazio's departure, the plaintiffs commenced an internal investigation into various and numerous discrepancies in payroll records, including with the Canada Revenue Agency monthly and annual accounts, which could not be reconciled. That investigation led to the discovery that Ms. Fazio had been using her knowledge of their computerized payroll system to systematically defraud them of significant sums of money.

[5] On December 21, 2021, the plaintiffs filed this notice of civil claim against Ms. Fazio, and on the same day sought an *ex parte* Mareva injunction to freeze Ms. Fazio's assets. That application was heard the same day by Justice McDonald, who ordered *inter alia* that:

- a) Ms. Fazio could not remove, deal with, diminish, or dispose of any of her assets, whether in her name or otherwise, including certain named bank accounts known to be in her name; and

- b) Within seven days of being served with a copy of the order, Ms. Fazio was required to provide the plaintiffs' counsel with a list of assets verified by affidavit

(the "Freezing Order").

[6] Because the Freezing Order was set to expire on January 24, 2022, the plaintiffs appeared again before Justice McDonald on January 21, 2022, this time with Ms. Fazio in attendance. The Freezing Order was continued until further order of the Court. Ms. Fazio acknowledges that she was served with the notice of civil claim, the notice of application and supporting affidavits, and the Freezing Order, and acknowledges that she knew and understood their terms.

[7] On January 27, 2022, Ms. Fazio filed a response to civil claim that materially failed to respond to the allegations made against her. In particular, she did not set out any valid reasons why the plaintiff's claim against her lacked merit. The focus of her response was instead on allegations of a toxic workplace and various forms of mistreatment by the plaintiffs during her tenure as an employee since March 1998.

II. FORENSIC ACCOUNTING EVIDENCE

[8] In addition to the Freezing Order, Justice McDonald ordered that Ms. Fazio's banking institutions disclose particulars to the plaintiffs of various accounts owned or thought to be owned by Ms. Fazio. After that disclosure was made in due course, the plaintiffs conducted an internal review, then retained the services of an expert forensic accountant, Mr. John Williams, to investigate the suspected unauthorized payments orchestrated by Ms. Fazio and provide his opinion on:

- a) how unauthorized payments to Ms. Fazio's bank accounts were made;
- b) how many unauthorized payments were directed to accounts owned by Ms. Fazio; and
- c) the total dollar value of those unauthorized payments.

[9] Mr. Williams is well qualified as a forensic accountant. Ms. Fazio does not challenge his extensive credentials. His report is dated September 29, 2022, and was admitted into evidence without debate. Mr. Williams and his team performed an extensive and exhaustive forensic review of the plaintiffs' payroll records and identified some 885 unauthorized payments initiated by Ms. Fazio through the plaintiffs' payroll system. In total, Mr. Williams identified that Ms. Fazio misappropriated over \$1.9 million from the plaintiffs, which was deposited into 19 separate bank accounts that she held in four separate financial institutions.

[10] Briefly, Mr. Williams identified Ms. Fazio's *modus operandi* as follows:

- a) First, she would secretly select current and past employees of the plaintiffs at random and change the payroll direct deposit bank account information from the employees' bank accounts to bank accounts owned and controlled by her;
- b) Second, she would create fictitious payment proposals that induced the plaintiffs' computer payroll system to pay unauthorized employee wages that were not owing directly to her own bank accounts;
- c) Third, she would create payment instruction text files based on the payment proposals and upload them to the plaintiffs' online banking platform, which automatically instructed the plaintiffs' banks to make the unauthorized payments to one of her 19 bank accounts; and
- d) Finally, she would in many cases reverse the bank account information in the employee master file back to the original and correct bank account for that employee after the unauthorized payment had been made.

[11] Mr. Williams' opinion is that on those 885 separate occasions, Ms. Fazio misappropriated and converted funds totalling at least \$1,923,820.74 from the plaintiffs for her own use.

III. DISCUSSION

[12] The extensive materials filed by the plaintiffs, combined with Mr. Williams' forensic accounting expert report and supplemented by counsel's able submissions, paint an overwhelming case of fraud, misappropriation, conversion and deceit against Ms. Fazio. It serves no purpose to recite the numerous examples of where Ms. Fazio routinely, deliberately, and with obvious premeditation helped herself to over \$1.9 million of the plaintiffs' money while working as a trusted payroll supervisor. It is beyond doubt that her actions were planned and deliberate.

[13] Simply put, while in a position of trust, Ms. Fazio perpetrated a deliberate, methodical, and exploitative fraud on the plaintiffs by using her knowledge and expertise as a payroll administrator and payroll supervisor to transfer large sums of moneys over six years into bank accounts she owned and controlled. Either the same day or soon thereafter, she transferred the funds from her accounts to other accounts or put them to other uses.

[14] Ms. Fazio's response to civil claim and response to this application do not deny the fraud. Instead, Ms. Fazio makes broad and unsupported allegations against the plaintiffs that she was the subject of harassment, sexual harassment, overwork, and general mistreatment during her tenure as an employee. During submissions, Ms. Fazio effectively admitted the fraud. She says she developed a gambling addiction and gambled all of the money away to an online gambling portal. She says she is now without assets or income and in poor health.

[15] There are no disputed facts or issues relevant to the issues. In my view, Ms. Fazio has no meritorious defence to the plaintiffs' claim. It is plain and obvious that her response discloses no reasonable defence. I am amply satisfied that the plaintiffs have proven their case against Ms. Fazio in spades. She has no defence.

[16] For substantially the reasons set out in the plaintiffs' notice of application filed March 16, 2023, supplemented by the very detailed and impressive materials filed in support, including Mr. Williams' forensic report, the summary judgment application is allowed.

[17] Pursuant to R. 9-6(5)(a) of the *Rules*, the plaintiffs will have judgment against Ms. Fazio for the sum of \$1,923,820.74, together with prejudgment interest, pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79. I would alternatively have granted the summary trial application under R. 9-7(15). While unnecessary to do so because of my decision, I would also strike Ms. Fazio's response to civil claim pursuant to R. 9-5(1)(a) as showing no reasonable defence to the plaintiffs' claim.

[18] In addition, given the premeditated and deliberate nature of Ms. Fazio's fraud on the plaintiffs, this is an appropriate case for punitive damages. Punitive damages are intended to punish, not to compensate, and are driven by the logic of retribution, denunciation, and deterrence: *Erhardt v. Kendrick*, 2017 BCSC 813 at paras. 32–33, 40–41; *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062 at para. 28.

[19] Ms. Fazio was an employee in a position of trust and committed a serious, protracted, sophisticated, and deliberate fraud that resulted in the plaintiffs suffering a significant loss. Her unlawful acts require denunciation and an award that should be high enough to deter others from such conduct in the future. A message must be sent to those who are placed in a position of trust over corporate funds such as Ms. Fazio here, namely that if you steal from your employer, the consequences will be severe.

[20] Here, Ms. Fazio defrauded the plaintiff of over \$1.9 million. In my view, this is an egregious case of employee theft that warrants a significant punitive damage award. I consider that a punitive damage award in this case of \$100,000 is appropriate.

[21] I also agree with Mr. Bradshaw that for the same reasons, this is an appropriate case for an award of special costs against Ms. Fazio. She is clearly not an unsophisticated person. For unexplained reasons, she failed or refused to abide by the Freezing Order by spending money on living expenses without advising the plaintiffs' counsel in advance of the source of the funds and by failing to provide an affidavit-verified asset list that was to include all bank and investment accounts.

[22] In summary, the plaintiffs are awarded:

- a) judgment against Ms. Fazio of \$1,923,820.74;
- b) prejudgment interest on that sum in accordance with the *Court Order Interest Act*;
- c) punitive damages of \$100,000; and
- d) special costs.

[23] As requested, all other relief as set out in the notice of civil claim is adjourned generally. The plaintiffs are to prepare the order I have made. I am dispensing with the requirement to have Ms. Fazio sign the order, but she will be provided an entered copy in the usual course.

[24] Those are my reasons.

(SUBMISSIONS)

[25] THE COURT: All right. Exhibit B, the spreadsheet, will be sealed until further order.

“G.P. Weatherill J.”